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Arizona Corporation Commission
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BEFORE THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN	COMMISSIONER	COMMISSIONER

ANDY TOBIN	BOYD DUNN
COMMISSIONER	COMMISSIONER

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.	**DOCKET NO. E-01345A-16-0036** **DOCKET NO. E-01345A-16-0123**
IN THE MATTER OF FUEL AND PURCHASED POWER PROCUREMENT AUDITS FOR ARIZONA PUBLIC SERVICE COMPANY.	**ENERGY FREEDOM COALITION OF AMERICA'S MOTION FOR RECONSIDERATION OF THE APPROVAL OF APS' MOTION FOR PROTECTIVE ORDER**

In its January 13, 2017, Procedural Order granting Arizona Public Service's ("APS") Motion for Protective Order (the "Order") the Commission indicates that it grants the Protective Order because of the "timing and purpose" of the noticed depositions.[1] The Energy Freedom Coalition of America ("EFCA") respectfully requests that the Administrative Law Judge reconsider the Order and permit EFCA to take the depositions

[1] Order, page 9, line 16

that are essential to its opportunity to put on an effective case and represent its interests in what is one of the most important rate cases in Arizona history. Under the circumstances, it is fundamentally unfair to deny EFCA the right to utilize a statutorily recognized discovery tool. EFCA submits that the proffered justification in the Order for denying a permitted and important discovery tool is based upon mistaken facts and an incorrect application of the law. EFCA appreciates the Administrative Law Judge's attention to this important issue and, for the reasons set forth below, respectfully asks that the Order be reconsidered and that the Protective Order be lifted.

I. THE ORDER RELIES UPON MISTAKEN FACTS ABOUT THE TIMING OF THE DEPOSITIONS

The Order contains three key factual mistakes with regard to the timeliness of the Notices of Deposition. First, depositions only have clearly been an available tool in this proceeding since the Procedural Order of November 17, 2016 that permitted the deposition of Ms. Lockwood. The deposition of Ms. Lockwood was held on December 15, 2016. It was Ms. Lockwood's inability to answer many questions and her referral of other questions to other APS witnesses that solidified the need for the depositions now sought by EFCA. Just 15 days after the Lockwood deposition occurred and soon after the transcript was received, EFCA noticed the depositions of Messrs. Snook and Miessner. It is unfair for the Commission to permit depositions after November 17, 2016 but then declare that depositions noticed only 43-days later are unreasonably late.

Second, the Order mistakenly concludes that Messrs. Snook and Miessner are busy preparing their rebuttal testimony at this time. But as rate design witnesses, they will not be preparing rebuttal testimony until after Intervenor and Staff rate design testimony is filed on February 3, 2017. Relatedly, the Order indicates the depositions are inappropriate because settlement discussions are occurring; however, settlement discussions have now adjourned for three weeks.

Third, APS itself expressly argued that depositions should be taken later in the

process[2], not earlier, and waiting causes no undue burden. Each of these key deficiencies is discussed in greater detail below.

A. IT IS UNFAIR TO ELIMINATE THE RIGHT TO TAKE DEPOSITIONS AFTER MAKING THEM AVAILABLE FOR SUCH A SHORT TIME

The deposition of Ms. Lockwood was permitted by way of the November 17, 2016 Procedural Order. Despite noticing that deposition on October 3, 2016, the subsequent motion for protective order filed by APS was not decided and the deposition was not permitted until 45 days later.[3] That deposition occurred less than a month later after the date was negotiated between the parties. EFCA issued the Notices of Deposition for Snook and Miessner just 15 days after Ms. Lockwood's deposition and just 11 days after receiving the transcript. As explained in EFCA's Response to APS's Motion for Protective Order, Lockwood deferred questions to Snook and Miessner in her deposition.[4]

It is objectively unfair for the Commission to only clarify that depositions would be permitted for the first time on November 17, 2016 and then conclude that depositions noticed just 43-days later are unreasonably late. Had Lockwood's deposition proceeded when originally noticed, it would have occurred on October 19, 2016 and, assuming the same timing, would have been followed by deposition notices for Messrs. Snook and Miessner 15 days later on November 3, 2016. Presumably, this timing would have been deemed reasonable but now because APS succeeded in delaying the Lockwood deposition, the timing is unreasonable and as a result APS benefits from its delay tactic by avoiding opening its experts to deposition.

The only reason the Snook and Miessner depositions were not noticed earlier is that the issue of deposition practice was not resolved until just over a month before the notices

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[2] *See* the *Motion for Procedural Conference and Interim Protective Order* filed by APS on October 6, 2016 at page 6, line 11 through page 7, line 6.

[3] October 3, 2016: EFCA first noticed Ms. Lockwood's deposition for October 19, 2016.
October 6 2016, APS sought a protective order to prevent the Lockwood deposition.
October 14, 2016, an interim protection order was granted delaying the Lockwood deposition.
November 17, 2016 (45 days after the notice of deposition was served) a Procedural Order was issued permitting the Lockwood deposition.

[4] *See Energy Freedom Coalition of America's Response to APS's Motion for Protective Order*, page 3 line 24 through page 4 line 6 and Exhibits 1 and 2 to that Response.

actually went out. The Notices of Deposition were timely and any perception of untimeliness is the result of delays by persons other than EFCA.

B. SNOOK AND MIESSNER'S DEPOSITIONS WILL NOT AFFECT PREPARATION OF REBUTTAL TESTIMONY OR SETTLEMENT DISCUSSIONS

While APS is likely preparing rebuttal testimony as the Order states, the only filed testimony to date for APS to rebut is Intervenor and Staff testimony that is not related to rate design. Mr. Snook and Mr. Miessner only offer rate design testimony and are described by APS as "key rate personnel."[5] In a review of the Intervenor and Staff's filed testimony to date, EFCA does not see any critique of Snook or Miessner. As a result, there is simply no conflict between the depositions and the time need for these witnesses to prepare their rebuttal testimony. To the extent there is a future conflict between preparing rebuttal testimony and being available for deposition, delaying the depositions will create that conflict while taking the depositions now that will alleviate it.

Further, settlement discussions have adjourned and will not resume until February 6, 2017. As a result, there is no conflict between settlement discussions and the proposed depositions.

C. APS PREVIOUSLY DECLARED THAT THIS TIMING DID NOT CREATE A BURDEN

APS vigorously argued that Ms. Lockwood's deposition should not occur until just weeks before the hearing in this matter. In fact, in its October 18, 2016 Reply in Support of Motion for Procedural Conference and Interim Protective Order, APS strenuously argued against parties being permitted to take "early depositions" and argued in favor of a deposition practice that would have depositions taken in the last month before the hearing, after rebuttal testimony has been filed.[6]

In light of the Applicant's stated positon that EFCA should wait *even longer* to notice depositions, EFCA asks that the Judge reconsider the Order wherein it concludes

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[5] *Motion for Protective Order*, page 2 line 5

[6] See APS' *Reply in Support of Motion for Procedural Conference and Interim Protective Order*, page 5, line 21 through page 6, line 7 (October 18, 2016).

that it was unreasonable for EFCA to notice these important depositions on December 30, 2016. EFCA respectfully submits that if the Applicant itself believes that depositions should be noticed in late February or early March, it is a mistake to conclude that depositions noticed in late December create an unreasonable burden on the Applicant.

II. ARIZONA RULES ARE TO BE LIBERALLY CONSTRUED TO FACILIATE DISCOVERY

Arizona Statutes and Commission regulations codify the right to take depositions in addition to other discovery. A.R.S. 40-244(A); Ariz. Admin Code R14-3-109(P). A dominant purpose of our state's rules facilitating depositions is to permit a party to prepare for hearing, and the rules are to be liberally construed to that end. 2A, Barron and Holtzoff, *Federal Practice and Procedure* (1961), Sections 641, 792 as cited in *City of Phoenix. v. Peterson,* 11 Ariz. App. 136, 142, 462 P.2d 829, 835 (1969). It is a common principle that the rules of discovery are to be broadly and liberally construed to facilitate identifying the issues, promote justice, provide a more efficient and speedy disposition of cases, avoid surprise, and prevent the trial of a lawsuit from becoming a 'guessing game.' *See Hickman v. Taylor*, 329 U.S. 495, 67 S. Ct. 385, 91 L. Ed. 451 (1947); *Watts v. Superior Court*, 87 Ariz. 1, 347 P.2d 565 (1959), and citations; *DiPietruntonio v. Superior Court*, 84 Ariz. 291, 327 P.2d 746 (1958). The principles espoused regarding discovery applies equally to depositions and "deposition discovery rules should be accorded broad and liberal treatment." *Skok v. City of Glendale*, 3 Ariz. App. 254, 413 P.2d 585 (1966). The remedy of prohibiting discovery should not be routinely granted. *Zimmerman v. Superior Court*, 98 Ariz. 85, 87, 402 P.2d 212, 213 (1965).

While rulings in discovery matters are discretionary with the court, discretion is limited to deciding controverted factual issues, drawing inferences where conflicting inferences are possible, and weighing completing interests; discretion does not include "the privilege of incorrect application of law or of a decision predicated upon irrational bases." *Brown v. Superior Court,* 137 Ariz. 327, 331, 670 P.2d 725, 729 (1983).

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A. THE PURPOSE OF THESE DEPOSITIONS IS THE SAME AS THE DEPOSITION ALREADY PERMITTED

The Order suggests that the purpose of the Snook and Miessner depositions and the purpose of the Lockwood deposition are meaningfully different. While EFCA concurs that the testimony offered by Ms. Lockwood, Mr. Snook, and Mr. Miessner are all unique, the purpose of the depositions is the same. It appears the Order concludes that because Mr. Snook and Mr. Miessner present more technical testimony, a deposition is somehow less valuable or would serve a different purpose. EFCA respectfully disagrees with this conclusion. In fact, the Arizona Rules of Civil Procedure specifically authorize the depositions of expert witnesses.[7]

As contemplated in Rule 26(b)(4)(A), depositions of technical experts are standard practice in Arizona. The fact that the deposition of an expert is sought cannot be a factor in determining whether extraordinary circumstances exist to abrogate the right to a deposition. Nevertheless, the Order appears to mistakenly use the fact that Mr. Snook and Mr. Miessner present technical testimony as a justification for concluding that the depositions should be prohibited. This is a legal error and cause for reversal. The fact that these witnesses are technical expert witnesses who will testify at the hearing entitles EFCA to their depositions. Rule 26(b)(4)(A) favors depositions of experts and it is improper to use the witnesses' position as an expert to justify prohibiting a deposition.

It is exceedingly common for experts in extremely technical fields to be deposed for use in evaluation and understanding of the case and for eventual presentation to the tribunal. EFCA is unaware of any Arizona case law or statutory authority denying a party the right to a deposition merely because the deponent's area of testimony is technical or complex.

B. DEPOSITIONS ARE THE MOST EFFICIENT METHOD TO ASK QUESTIONS AND FOLLOW-UP QUESTIONS

Depositions are the most efficient means for a party to ask questions and get timely

[7] *See* ARCP, Rule 26(b)(4)(A) ("Deposition of an Expert Who May Testify. A party may depose any person who has been disclosed as an expert witness under Rule 26.1(a)(6)").

and meaningful responses in discovery. Depositions also permit immediate follow up to answers provided. If EFCA is forced to limit itself to only written data requests, EFCA may have to propound many successive requests to obtain answers likely drafted by attorneys or may have to wait until the hearing to ask live questions. If the anticipated deposition questions were posed to Messrs. Snook and Miessner using the data request procedure, EFCA would have to wait seven days for a response. If the response is insufficient or, as is likely, triggers follow-up questions, additional data requests will be propounded and an additional seven days must be waited for a response. The process is time-consuming, slow, and inefficient. An original question with just two follow up questions will take more than three weeks to process. A deposition will permit EFCA and APS to accomplish the entire process at one time, in one place, and in a discrete period of time. Arizona courts have recognized that depositions are often more efficient at obtaining information from experts than protracted written discovery. *American Family Mutual Insurance Co. v. Grant,* 222 Ariz. 507, 513, 217 P. 3d 1212, 1218 (2009).

As the Order references, technical conferences were indeed held and Messrs. Snook and Miessner did attend, but these conferences are inadequate substitutes for any form of formal discovery including depositions. Not only did the conferences occur prior to the Lockwood deposition where she deferred many questions to Snook and Miessner, but the statements made by Snook and Miessner at the conferences were not under oath and were not recorded so they could not be used at the hearing or even in preparation for the hearing because of the unsworn and informal nature.

C. DEPOSITIONS WILL RESULT IN A MORE EFFICIENT HEARING

Depositions help streamline the presentation of the case by eliminating duplicative testimony, narrowing foundation testimony to that which is essential, and avoiding unnecessary questioning about areas in which the expert cannot provide testimony. The examination of a witness during a deposition eliminates the need to ask so many broad questions during the hearing in cross examination. Foundational questions and general discovery questions could all be addressed during depositions rather than wasting the

Commission's time during the hearings. Attached as **Exhibit A** are fourteen consecutive pages of transcript from the Tucson Electric Power rate case. If a deposition had been taken in that rate case, the questioning that consumed these fourteen pages of transcript could have been asked during the deposition rather than at the hearing. Much of this back and forth is resolving misunderstandings about exhibits and party positions and details of proposals which could have been hashed out during the deposition leading much more focused questioning at the hearing. This is but one example of testimony, much of which would have been unnecessary, that could have been substantially streamlined if the witness had been deposed.

D. EFCA HAS ONLY SOUGHT THREE DEPOSITIONS

EFCA has already restricted its discovery efforts to the crucial aspects of APS' case. While APS has named at least 15 witnesses to date, EFCA has only sought to depose three and only two of those three requests remain at issue. This is not an instance where unlimited, far reaching discovery is being sought or even contemplated; EFCA merely seeks to depose the key persons APS has designated as its experts.

III. CONCLUSION

The factual premises upon which the Commission granted APS' Motion for Protective Order regarding the Snook and Miessner depositions are incorrect and no case law or statutory authority supports denial of EFCA's right to depose APS' designated experts. EFCA respectfully requests that its Motion for Reconsideration be granted and the Protective Order be lifted.

Respectfully submitted this 18th day of January, 2017.

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EXHIBIT A

the marginal cost study. That's what it's all about, is the costs. So those costs have obviously been studied.

The benefits, there's not been any special study other than the fact that they're receiving service and can benefit from the subsidies created through the net metering rules. Those benefits, we've done no study that I'm aware of that would add to that.

Q. Okay. And there's nothing in the record that you would characterize as a benefit/cost analysis of this proposed additional charge to the solar customers, correct?

A. I've not tried to arrive at a special study labeled as such.

Q. Okay.

A. And I'm not aware of another one.

Q. Let's turn to the TORS program. There has been -- I guess you're the authority as you are on most things at this point that are left. Can you tell us how much is being proposed for inclusion in rate base based on the TORS program in this case?

A. The data request I remember seeing was about $16,000 of post-test year plant is being included in this case for the TORS program itself.

Q. And how much -- is there anything other than the post-test year plan for the TORS program?

A. No. No. We did not -- we may have had -- that's the total number, whether it's current or post, that's the number that I'm aware of that's included in base rates.

Q. Is it your understanding that that amount is being spread over all classes and not just the residential class?

A. Yes. I can't think of any other way it would be done than spread it across all classes.

Q. Do you have up there -- there was EFCA-6 and 7 which was a spreadsheet and a response to RUCO 14.1.

A. I actually have a copy of the spreadsheet. But let me get your exhibit, if I can find it.

MR. RICH: Your Honor, if I can approach, I actually printed a new version of the spreadsheet that has the rows and columns identified by letters and numbers. I didn't realize that wasn't on the original version. Thanks.

BY MR. RICH:

Q. Mr. Jones, I've handed out to you what I've pre-marked as EFCA Exhibit 8; is that correct?

A. Yes.

Q. Would you agree that that is a copy of the work paper calculation that was referenced in response to RUCO 14.1?

A. It does appear to be so, yes.

Q. And this is -- can you confirm also for the record that this appears to be the same as EFCA Exhibit 7 only in this case it includes rows and column identifiers for ease of reference?

A. Yes, I can confirm that.

Q. We'll have this handy if we need this.

In RUCO 14.1 which is EFCA Exhibit 6, would you agree that this describes the calculation that TEP performed in order to determine the revenue requirement in the alleged subsidy for the TORS program? You should have that up there. I'm not sure if you see it or not.

A. Yes. I was trying to understand your question a little bit more. Can you say that, ask me that one more time?

Q. Sure. And I guess the questions speak for themselves there on 14.1. Let me get into it.

But would you agree that in performing the revenue requirement calculation for the TORS program that TEP based its analysis on a system that is sized to provide 85 percent of the power needed for the customer?

A. That's correct.

Q. And would you also agree that when you calculated on this spreadsheet, EFCA Exhibit 8, the amount you estimate you will take in in revenue from a

customer that is part of the TORS program, you made that calculation based on the assumption that that customer had a system that would offset 100 percent of their load; is that correct?

A. Yes, that's correct.

Q. So the revenue requirement portion, the cost of the program was based on a system of 85 percent, that would offset 85 percent, correct?

A. Correct.

Q. And then the assumption on the revenue that would come in was based on a system that was 100 percent of the load, correct?

A. Yes.

Q. Okay. And so would you agree that if you were trying to determine the amount of the subsidy provided by ratepayers to the TORS program, you would compare the income derived from the system to the cost of a system of the same size, wouldn't you?

A. I think what you're missing is what we are going to require the customer to pay for is what the system would be sized at to meet 100 percent of their needs. And then that cost is what we're using as the recovery amount offsetting the costs that we're going to place in base rates.

The cost of the revenue requirement, the

$7.5 million is what would ultimately be rolled into base rates, because we feel like we ought to size those systems at about 85 percent. And so that's the cost we're going to ask for to be recovered from base rates.

Q. So if you size a system at 100 percent, are you only going to ask for 85 percent of that system to be put into base rates?

A. No, because the customer -- we're going to size it at 100 percent, because the customers have a 15 percent band below and above. So initially we're sizing them to get to that 85 percent level.

Q. Well, you just started saying you're going to size it at 100 percent, and then you ended saying you're sizing it to get to 85 percent. So clarify that, please.

A. The 100 percent is what we are -- the customer is going to pay based on the size of the system necessary to meet 100 percent of their load. That's what the customer is paying.

We're going to go ahead and install -- the system actually installed is at 85 percent of that load. And that way, with the 15 percent band on either side, you have some flexibility in what is needed to serve the customer.

Q. So you're going to be charging customers for a

system that's larger than the actual system that they receive?

A. We are charging them for the benefits they're receiving. They are receiving service for 100 percent of their needs, regardless. The solar system is incidental to that. The size of that solar system has no bearing on what that customer is using. Because the way the TORS program is set up is to meet the customer's needs, we're going and putting a system on their roof or their property to generate what we believe is necessary to meet most of what their needs are. And instead of oversizing them and charging them for an oversized system, we felt we would go in with an 85 percent system from an actual installation standpoint.

Q. So what happens to the extra 15 percent that you're not providing that customer because you've sized the system smaller than 100 percent?

A. It would be the same thing if we sized at 100 percent and the customer's usage went up to 114 percent. We meet their needs with energy off the system basically. Or if it's a cloudy day, we meet their needs with energy off the system. They aren't going to use 100 percent every single day.

Q. You compare that number to a nonTORS rooftop solar project that is sized to meet 100 percent of the

customer's load, correct?

A. Yes. We felt since we're pricing or what the customer would be paying would be based on a 100 percent system, the appropriate comparison would be a nonTORS customer being sized at 100 percent.

Q. Wouldn't the appropriate comparison be one that's sized at 85 percent because that's what you're comparing for the cost of your system?

A. No, because what that customer will offset in both scenarios is 100 percent of their load.

Q. Okay. So for that 15 percent between 85 and 100, you're essentially just forgiving that or writing that off or imagining that 85 percent is the same as 100 percent?

A. We'll make it up in some other fashion, whether that's utility scale solar, whether that's current energy needs. Over the course of the year it's made up. Under the TORS program, that's the way it works, as I understand.

Q. Does someone there understand it better than you?

A. I didn't create the program. It's the way I've interpreted it for the spreadsheet.

Q. On the spreadsheet, can you show me where TEP allocates the cost of increased administrative costs to

the TORS program?

A. As I understand the development of the TORS program, it was supposed to be created on a footing level with a standard net metering option as far as services and costs and everything.

So there are no incremental costs charged to a net metering customer, at least when this program was developed, so there would not be any for the TORS program either. It goes back to the, I think the -- I forget what the phrase is -- parity, parity issue, trying to compare them equally.

Q. Okay. So you just had a long discussion with Mr. Hiatt about the costs that were being allocated or proposed to be allocated to the net metering customers for this meter charge.

Are you saying that you are not -- those types of charges, are those being allocated to TORS customers?

A. I think what I'm saying is, when the TORS program, this original program was approved, there were no other incremental charges being recovered from standard net metering, and the TORS program was designed to be comparable to that offering.

You know, if in the future an incremental charge is created and offered, any new TORS program, that would have to be considered in what is developed.

Q. So is it accurate then that you believe that there are increased incremental charges that TEP incurs as a result of the TORS program, but those charges are not depicted on EFCA-8 and are not being proposed to be allocated to the program?

A. I think the charges reflected in this worksheet are designed to mirror -- mirror is a bad word. Replicate, I guess, charges being recovered through the current net metering provisions.

Q. Okay. And that wasn't the question I asked though.

Do you believe that there are increased costs as a result -- let's break it up. Do you believe that there are increased costs that the utility incurs as a result of the TORS program?

A. To the extent we incur costs above the 2.2 cent -- or $2.20 installation cost, I can't sit here and tell you what's exactly in that $2.20. If they've included costs of the bidirectional meter in our program, I can't tell you that yes or no. The $2.20 is what we're using as the installed costs. If there are incremental costs over and above that to provide the service, then yes, there are other costs.

Q. And you don't know if there are those other costs?

A. I haven't seen the development of the $2.20. I'm not sure what's in the costs.

Q. The items depicted in EFCA-8 on this spreadsheet, to your knowledge, is that an exhaustive list of the costs that have been allocated to the TORS program?

A. It's everything that I'm aware of, yes.

Q. And so would you agree with me that, for example, administrative costs do not appear on this spreadsheet?

A. There are no A & G costs included in that, but we do include them in the calculation of the subsidy because they would be included in the 7.235 cent rate.

Q. I didn't follow you there.

A. When the subsidy is calculated under either scenario, it's based on the average nonfuel rate that would be applied to the equivalent customer on a standard rate, which the weighted average is about 7.235 cents. So that would include everything that's in base rates, including A & G.

So anything, either system, standard net metering or TORS, costs over and above that number is included in the subsidy calculation that's highlighted in orange. So that very well could be in that number, the 46 -- $42 under TORS or $76 under the standard net

metering rate.

Q. To the extent, however, that you don't include specific costs that actually increase for the customer within and attributed to the TORS program, would you agree then that the company is recovering those costs elsewhere?

A. If they're not specifically recovered in the calculation of the TORS rate, yes.

Q. Would you agree that that would be a subsidy to the TORS program from the rest of the company and the rest of the ratepayers?

A. Exactly like a standard net metering customer, yes.

Q. Are you aware of any prudency review that was undertaken with regard to the TORS program?

A. It was my understanding that as the program was developed, other parties -- I'm not exactly sure which parties -- would review the outcome of the program to verify that at least parity was held true. So from a standpoint of prudence, I think the only question that had to be answered is if the offering of the program produced a subsidy that was less than what the subsidy would have been under the traditional, I guess I'll call it traditional net metering process. As long as the subsidy was less, then it would be deemed appropriate.

I'm not sure what other prudence requirements were established. I'm not aware of any.

Q. And would you agree with me that we will not know the final arrangement for net metering customers until, as it appears now, until the outcome of Phase 2 of this proceeding, correct?

A. This is all based on current net metering provisions, I believe. And as I understand it, whatever changes result from Phase 2 would be applied prospectively. So I would assume this would be fully subscribed by that point, which means the existing net metering provisions would be what would be tested for this initial program, which is what I'm evaluating here.

Q. So this initial program is being approved, albeit small now, but will be bigger later, here in this rate case, correct?

A. $16,000 of the cost recovery is included in these rates, yes.

Q. And Phase 2 is part of this rate case, correct?

A. Correct.

Q. And so would you agree with me that if TORS was approved as you have proposed it in Phase 1 of this rate case, that its relationship to the amounts caused by net metering customers will no doubt change as a result of the outcome of Phase 2?

A. I believe it was Mr. Tilghman of the company who indicated that after the resolution of Phase 2, if there were other provisions that needed to be considered on a prospective basis for either net metering or TORS, they would be considered at that time. But I think the program as it's developed now is based on existing provisions, and I believe it's accurately reflected here. Did I follow your question?

Q. I think so. I guess I'm having trouble with -- you're proposing the treatment in this case of the TORS program that's in place, you're proposing one treatment, but you're not arguing that that treatment makes it at parity with the treatment that you're proposing for solar customers at the same time, are you?

MR. PATTEN: Your Honor, I'm going to object. It's a little ambiguous what treatment we're proposing other than some rate basing and some TORS. The rate will be decided in Phase 2. There is a rate in place now, and there are some other issues that have been briefed and are awaiting rulings. I'm a little confused on what treatment you're referring to.

ALJ RODDA: I'm sorry, can you repeat it or do you want me have it read back?

THE WITNESS: Can I try this?

BY MR. RICH:

Q. Sure. You go.

A. Today, we have net metering provisions in place. The TORS program today is being proposed consistent with that. That will continue forward as it is right now until, if a change is made, a change is made, whether that's Phase 2 or in the next rate case.

Assume it's in Phase 2. Whatever change is made for existing net metering, I think what Mr. Tilghman was saying, would be considered as potentially appropriate for the TORS program as well. I don't know what that outcome is. I'm not the one who would testify to that yea or nay, but that's my interpretation of what's going on.

So I think what we're doing right now, it's consistent. What happens after Phase 2, you would argue should be consistent as well, and the Commission will decide yea or nay in whether that's appropriate.

Q. So are you saying then at the time that the company comes in to rate base the remaining TORS program or the remaining TORS assets, that the company will take into consideration the outcome of Phase 2 in designing a revenue recovery methodology that takes into account and tries to put those programs on the same level.

Let me reask that, because you couldn't ask that any worse.

Are you saying that TEP is committing to incorporating the outcome of Phase 2 when it comes back in to ask to rate base the rest of the TORS program, it will commit to making the TORS program and net metering the same cost at that point in time?

A. I don't think I'm the person who could commit TEP to that type of thing. But I think, as Mr. Tilghman indicated, if after the resolution parties deem it appropriate, it would be something we would address.

Q. Okay. At the time the investment was made in the TORS program that's being proposed for rate base inclusion, would you agree that the utility knew that utility scale solar would be a less expensive investment for the utility?

A. Yes.

Q. And at the time the investment was made in the TORS program that's being proposed for inclusion in rate base, would you agree that the utility knew that acquiring renewable energy credits was a less expensive alternative?

A. I don't deal with the renewable energy credit side of things, so I'm not sure I could say accurately yes or no to that question.

Q. Okay. TEP is not asking -- and I'll relate this to this phase after this one question -- is not asking